

District: Noakhali

In the Supreme Court of Bangladesh

High Court Division
(Civil Revisional Jurisdiction)

Present

Mr. Justice Md. Zakir Hossain

Civil Rule No. 312 (Con) of 2019

Zafar Ahammad (defendant No. 55) being died
his heirs: Zohura Akhter and others

..... Defendant-Appellant-Petitioners

-Versus-

Mohammad Sadeque and others

..... Plaintiff- Respondent-Opposite Parties

Mr. Md. Khalilur Rahman Bhuiyan, Advocate

..... For the petitioners

Mr. Abul Kalam Chowdhury, Advocate

..... For the opposite parties

Heard on:02.01.2023

Judgment on: 28.05.2024

At the instance of the petitioners, the Rule was issued to examine the cause of delay of 3631 days in filing revisional application.

Facts leading to the issuance of the Rule are *inter alia* that in Title Suit No. 271 of 1987, the learned Assistant Judge, 2nd Additional Court, Sadar, Noakhali passed preliminary decree on 25.01.1996 allocating separate *saham* to the plaintiffs and other defendants. Being aggrieved by and dissatisfied with the judgment and decree of the Appellate Court, the petitioners preferred Title Appeal No. 40 of 1997 before the learned District Judge, Noakhali. After admitting the appeal and observing other formalities, the learned District Judge was pleased to transmit the record to the Court of the learned Joint District Judge, 2nd Court, Noakhali for

disposal of the appeal. Upon hearing, the Appellate Court was pleased to dismiss the appeal by his judgment and decree dated 18.02.2009. Impugning the judgment and decree dated 18.02.2009 (decree being drawn on 24.02.2009), the petitioners filed a revisional application invoking section 115(1) of the Code of Civil Procedure, 1908, in short 'the CPC' causing delay of 3631 days and moved this Court and obtained the aforesaid Rule.

Heard the submissions advanced by the learned Advocates of the petitioners and the opposite parties at length and perused the materials on record with due care and attention and seriousness as they deserve. The convoluted question of law embroiled in this case has meticulously been waded through.

The moot issue is as to whether the petitioners have been able to prove the cause of delay sufficiently and reasonably.

On meticulous and meaningful reading of the application for condonation of delay, it demonstrates that the petitioners hopelessly failed to explain the cause of inordinate delay sufficiently and reasonably. The causes as shown in the aforesaid application are feeble, fragile and not well founded.

It is admitted position that in the meantime, the preliminary decree passed in Partition Suit was made final as per the report of the Advocate Commissioner. Therefore, the revisional application is not maintainable. The petitioners may prefer appeal against final decree

subject to the fulfilling the conditions set out under section 96 & 97 of the CPC, if so advised.

Having regard to the facts and circumstances of the case, I am of the view that the Rule is devoid of any substance and it shall fall flat.

In the result, the Rule is discharged, however, without passing any order as to costs. The earlier order of stay granted by this Court, thus, stands recalled and vacated.

Let a copy of the judgment be transmitted to the Court below at once.

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(Md. Zakir Hossain, J)

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